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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1949

No. 3

THE UNITED STATES OF AMERICA, EX REL. RICHARD EICHENLAUB, PETITIONER,

vs.

W. FRANK WATKINS, AS DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION OF THE UNITED STATES FOR THE DISTRICT OF NEW YORK, ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 3, 1948.

CERTIORARI GRANTED JUNE 27, 1949.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

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—3489

[fol. 1] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, ex rel. RICHARD EICHENLAUB, Relator-Appellant,

against

W. FRANK WATKINS, as District Director of Immigration and Naturalization of the United States for the District of New York, or Such Person, if Any, as May Have the Said Richard Eichenlaub, in Custody, Respondent-Appellee

STATEMENT UNDER RULE 13

This appeal is taken from an order entered March 1, 1946, dismissing a writ of habeas corpus.

This proceeding was commenced by the filing of a petition for a writ of habeas corpus and the issuance of a writ of habeas corpus on November 8, 1945.

The return to the writ of habeas corpus was filed on January 8, 1946.

Argument was heard on January 8, 1946, by Hon. Samuel Mandelbaum, United States District Judge. On January 22, 1946, he handed down an opinion dismissing the writ.

This appeal was taken on March 22, 1946.

There has been no change in parties or attorneys since the commencement of the proceeding.

[fol. 2] WARRANT OF DEPORTATION

United States of America
Department of Justice
Philadelphia, Pa.

Warrant—Deportation of Alien
99622/629

No. A-5999792

To District Director of Immigration and Naturalization, New York, New York:

Or to any Officer or Employee of the United States Immigration and Naturalization Service.

Whereas, after due hearing before an authorized immigrant inspector, and upon the basis thereof, an order has been duly made that the alien Richard Eichenlaub who entered the United States at New York, New York, ex SS "Hamburg" on the 20th day of Aug. 1937 is subject to deportation under the following provisions of the laws of the United States to wit: The Act approved May 10, 1920 in that he has been found to be a member of the undesirable classes of alien residents enumerated in said Act, to wit, an alien who since August 1, 1914 has been convicted of conspiracy (18 U. S. C. 88) to violate an Act entitled, "An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes," approved June 15, 1917 (22 U. S. C. 233).

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Attorney General under the laws of the United States and by his direction, do hereby command you to deport the said alien to Germany, at the expenses of the appropriation, "Salaries and [fol. 3] Expenses, Immigration and Naturalization Service, 1946", including the services of an attendant, if necessary.

For so doing this shall be your sufficient warrant.

Witness my hand and seal this 9th day of October, 1945.

—— ——, Richard J. Powers, Acting Chief Exclusion and Expulsion Section.

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

WRIT OF HABEAS CORPUS

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To: W. Frank Watkins, District Director of Immigration and Naturalization of the United States for the District of New York, or any other person having the custody of Richard Eichenlaub:

Greeting:

[fol. 4] You are hereby commanded, that the body of Richard Eichenlaub by you restrained of his liberty, as it

is said detained by whatesoever names the said Richard Eichenlaub may be detained, together with the day and cause of Richard Eichenlaub being taken and detained, you have before one of the Judges of the United States District Court in and for the Southern District of New York, in Room 506, at 10:30 A. M., on the 16th day of November, 1945, then and there to do, submit to and receive whatsoever the said judge shall then and there consider in that behalf; and have you then and there this writ.

Witness the Honorable John C. Knox, United States District Judge, this 8th day of November, 1945.

William V. Connell, Clerk.

Writ allowed: 11/8/45.
William Bondy, U. S. D. J.

[fol. 5] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR WRIT OF HABEAS CORPUS

To the District Court of the United States for the Southern District of New York

The petition of Richard Eichenlaub, respectfully alleges and shows:

1. That he was born in Germany and was lawfully admitted into the United States on February 30th, 1930.

2. That on the 17th day of November, 1936, your petitioner became a citizen of the United States.

3. That your petitioner resided in the United States until 1937 when he returned to Germany. That he re-entered the United States on August 20th, 1937, as a United States citizen.

4. That on or about the 19th day of April, 1944, your petitioner was served with a warrant of arrest, dated April 19th, 1944, issued by the Department of Justice.

[fol. 6] 5. That your petitioner was accorded a hearing under the warrant of arrest and on January 11th, 1945, was served with proposed findings, conclusions and an order

recommending that your petitioner be deported to Germany on the following charges:

1) The Act of February 5, 1917, in that, on or after May 1, 1917, he has been sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after entry, to wit: Title 18 U. S. C. Sec. 88 (did conspire to act as agent for a foreign government without being registered, and as such agent to accumulate information for transmittal to a foreign government);

2) The Act of February 5, 1917, in that, he admits having committed a felony or other crime or misdemeanor involving moral turpitude prior to entry into the United States, to wit: Title 18, U. S. C., Sec. 88, (did conspire to act as agent for a foreign government without being registered and as such agent to accumulate information for transmittal to a foreign government); and

3) The Act of May 10, 1920, in that, he has been found to be a member of the undesirable classes of alien residents enumerated in Section 1 of said Act, to wit: An alien who since August 1, 1914, has been convicted of conspiracy (18 U. S. C. 88) to violate a part of an act entitled "An act to punish acts of interference with the foreign relations, the neutrality and the foreign commerce of the United States, to punish espionage, and better, to enforce the criminal laws of the United States, and for other purposes," approved June 15, 1917, (22 U. S. C. 233.)

[fol. 7] 6. That your petitioner excepted to said proposed findings, conclusions and order and appealed to the Board of Immigration Appeals in Washington, D. C.

7. That on July 16th, 1945, your petitioner was given a hearing before the said Board of Immigration Appeals.

8. That on the 29th day of October, 1945, your petitioner was informed by letter, dated October 29th, 1945, that a warrant had been issued on October 9th, 1945, directing that your petitioner be deported to Germany.

9. That your petitioner has never received a decision on his appeal to the Board of Immigration Appeals.

10. That the warrant of arrest and the warrant of deportation issued herein are without authority of law; the proceedings thereunder were unfair and the findings and conclusions are not based on any evidence adduced at the hearings or otherwise; and that the warrant of deportation is based on an erroneous construction of the law.

11. That no previous application has been made for the writ asked for herein, except that an application was made to Hon. John C. Knox, one of the Justices of this Court, by Katharina Eichenlaub, wife of the petitioner, on the 31st day of October, 1945, and a writ of habeas corpus was thereupon issued, dated the 31st day of October, 1945, and returnable before this Court in Room 506, at 10:30 A. M., on the 2nd day of November, 1945, and which was adjourned to November 9th, 1945. That your petitioner's wife had obtained the issuance of the writ of habeas corpus, dated October 31st, 1945, in the erroneous belief that the United States Attorney General had issued an order for the deportation of your petitioner as an alien enemy.

[fol. 8] 12. That on the return day, November 9th, 1945, the application and writ, applied for on October 31st, 1945, will be withdrawn.

13. That notwithstanding all of the foregoing, a warrant of deportation has been issued for the deportation of your petitioner to Germany and your petitioner is now illegally detained, imprisoned, and restrained of his liberty by the respondent at Ellis Island, New York Harbor, within the jurisdiction of this honorable court.

Wherefore, your petitioner respectfully prays that a writ of habeas corpus may issue directed to the said W. Frank Watkins, as District Director of Immigration and Naturalization, requiring him to bring and have your petitioner before this court at a time to be by this court determined, together with the true cause of the detention of your petitioner, to the end that due inquiry may be had and that this court may proceed to determine the facts of this case in that regard and the legality of your petitioner's imprisonment, restraint and detention and thereupon to dispose of this case as law and justice may require.

Richard Eichenlaub.

[fol. 9] *Duly sworn to by Richard Eichenlaub. Jurat omitted in printing.*

[fol. 10] IN UNITED STATES DISTRICT COURT

[Title omitted]

RETURN TO WRIT OF HABEAS CORPUS

SOUTHERN DISTRICT OF NEW YORK, ss.:

ALVIN LIEBERMAN, being duly sworn, says that he is an Assistant District Counsel for the New York District of the Immigration Service of the United States at 70 Columbus Avenue, New York, New York; that he in his official capacity is authorized to make and in behalf of the respondent hereby makes the following return to the writ of habeas corpus herein.

In compliance with the direction of this Court, the body of the said alien in his own proper person is produced herewith before this Court at the time specified in the writ.

It is respectfully urged that upon its face the petition upon which the writ was granted is insufficient in law, and that the writ should therefore be quashed because:

(a) The petition does not allege facts to show that the proceedings of the Department of Justice upon which was issued the order of exclusion pursuant to which the said alien is held, were not regular, fair and in compliance with [fol. 11] the statute applicable in such cases, nor facts from which this Court can determine that the proceedings were either irregular, unfair or not in compliance with said statute;

(b) The petition does not allege any facts which entitled this Court to review the findings and conclusion of the Department of Justice upon which the order of exclusion was issued;

(c) It is not alleged that there was no evidence before the Department of Justice upon which it based or could have based its findings and conclusion in accordance with which the order of exclusion was issued;

(d) It does not appear by allegation of facts that the issues sought by the petition now to be litigated in this Court have not already been determined by the Department of Justice adversely to the said alien in proceedings which were regular, fair and in compliance with the statute applicable thereto.

As appears by the records of the Department of Justice of the United States with respect to the above-named alien, copies of which are produced and filed herewith as part of this return:

1. The relator is an alien who was born in Germany on June 1, 1905. He first entered the United States on February 23, 1930 and was naturalized on December 17, 1936 in the United States District Court for the Southern District of New York. Following his naturalization, relator visited Germany and returned to this country on August 20, 1937, at which time he was admitted as a citizen of the United States. He has resided here since said date.

2. The relator was convicted in the United States District Court for the Eastern District of New York on September 3, 1941 of having conspired to act as an agent for a foreign Government without being registered, and as [fol. 12] such agent, to accumulate information for transmittal to a foreign Government (18 U. S. C. 88; 22 U. S. C. 233). On January 2, 1942, he was sentenced on this charge to imprisonment for 18 months and fined $1,000. On January 25, 1944, the relator's naturalization was revoked in this Court.

3. The alien was accorded a hearing on September 25, 1944, under a warrant of arrest which issued April 19, 1944. At the conclusion of the hearing the Presiding Immigration Inspector found that the alien was deportable.

4. The relator filed exceptions to the proposed findings and conclusions of law with the Board of Immigration Appeals. Upon review, the Board of Immigration Appeals ordered the alien to be deported. It concurred in the recommendation of the Presiding Immigration Inspector that the alien was deportable because by "The Act of May 10, 1920, in that he has been found to be a member of the undesirable classes of alien residents enumerated in Section 1 of said Act, to wit: An alien who since August 1, 1914 has been convicted of conspiracy (18 U. S. C. 88) to violate a part of an act entitled 'An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes', approved June 15, 1917, (22 U. S. C. 233)."

5. The hearing herein was fair and just and was not unreasonable or arbitrary.

6. The conclusion of the Board of Immigration Appeals to deport the alien to Germany is duly supported by the evidence, and there appear to be no grounds upon which the order of deportation may be determined to have been illegally made.

[fol. 13] 7. That the alien did receive a letter from the Immigration and Naturalization Service on October 29, 1945, stating that on October 9, 1945, a Warrant of Deportation had been issued directing that he be deported to Germany (see petition in support of writ, paragraph 8).

8. Since the Attorney General, by formal order, has ordered the alien deported to Germany, he is not entitled to be released on bail pending his deportation.

Wherefore, deponent prays that the writ of habeas corpus herein be dismissed, and that the relator be remanded to custody.

Alvin Lieberman, Assistant District Counsel.

Sworn to before me this 8th day of January, 1946.
Daniel Tanenbaum, Notary Public, Kings Co.

[fol. 14] IN UNITED STATES DISTRICT COURT

OPINION—January 22, 1946

The writ raises several questions. First, as to the fairness of the proceedings before the immigration authorities. In his brief, relator appears to have abandoned this contention. Nevertheless the court finds from the examination of the record that the proceedings were both fair and adequate and relator has no cause for complaint on that score. Second, as to a claimed erroneous construction of law. Relator urges that he pleaded guilty to having conspired to violate Section 233 of Title 22, U. S. C.; that this statute was renumbered to read Section 601 of the same title by the Act of March 28th, 1940, and provides for a greater penalty than provided for in Section 233. That this claimed repugnancy between the old and new statutes resulted in a repeal of the former; that relator was not deportable because Section 157 of Title 8, U. S.

C. A. which is the deporting statute does not include or mention Section 601.

There is no force to this contention at all since it is improperly assumed that Section 601 repealed Section 233. It is only amendatory and the deporting statute (Section 157, Title 8, U. S. C. A.) did not have to include the renumbered section. As a matter of fact, the relator was indicted, convicted and sentenced under Section 233 when actually Section — was already in effect. If any further evidence were needed, this would indicate that Section 601 did not repeal Section 233.

Aside from the foregoing, even if the law under which relator was convicted had been repealed, the conviction as a basis for subsequent deportation remained unaffected. Mahler v. Eby, 264 U. S. 32, p. 39-40. I must therefore conclude that relator's conviction of conspiring to violate Section 233 rendered him an undesirable alien subject to [fol. 15] deportation by order of the Attorney General without any further qualification. Mahler v. Eby, supra.

The court has examined the other points raised by the relator and finds them without merit.

Writ dismissed.

Dated, January 22, 1946.

Samuel Mandelbaum, U. S. D. J.

In United States District Court, Southern District of New York

Civ. 33-579

United States of America, ex rel., Richard Eichenlaub, Relator,

against

W. Frank Watkins, as District Director of Immigration and Naturalization of the United States for the District of New York, or such person, if any, as may have the said Richard Eichenlaub, in custody, Respondent

Order Dismissing Writ—February 28, 1946

The writ of habeas corpus in the above-entitled matter having come on to be heard before this Court on January

8, 1946, and after hearing Joseph J. Reville, Esq., attorney for the relator, in support of the writ, and John F. X. McGohey, United States Attorney for the Southern District of New York, John F. Ryan, Esq., of counsel, in opposition thereto, and upon the petition for the writ of habeas [fol. 16] corpus, the return thereto, and upon all the papers and proceedings heretofore had herein, and upon the filed opinion of the Court, it is

Ordered that the writ of habeas corpus be and the same hereby is dismissed; and it is

Further Ordered that the relator be remanded to the custody of the District Director of Immigration and Naturalization, Department of Justice, at Ellis Island, New York Harbor, New York.

Dated: New York, N. Y., February 28, 1946.

Samuel Mandelbaum, U. S. D. J.

In United States District Court

[Title omitted]

Notice of Appeal

Sirs:

Please take notice that Richard Eichenlaub, the relator herein, hereby appeals to the Circuit Court of Appeals for [fol. 17] the Second Circuit from the order entered in this proceeding on March 1st, 1946, dismissing the Writ of Habeas Corpus, and from each and every part of said order.

Dated, New York City, March 22nd, 1946.

Joseph J. Reville, Attorney for Relator, 201 West 72nd Street, Borough of Manhattan, New York 23, New York.

To:

The Clerk of the United States District Court, Southern District of New York, Foley Square, New York City.

To:

John F. X. McGohey, United States Attorney, Attorney for Respondent, Foley Square, New York City.

[fol. 18] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO RECORD

It is hereby stipulated and agreed that the foregoing is a true and correct transcript of the record of the said District Court in the above-entitled cause, as agreed on by the parties.

Dated, New York, May 28, 1946.

Joseph J. Reville, Attorney for Relator-Appellant.
John F. X. McGohey, Southern District of New York, United States Attorney for the Attorney for Respondent-Appellee.

[fol. 19] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 20] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1947

No. 254

(Argued April 14, 1948. Decided May 3, 1948)

Docket No. 20965

UNITED STATES OF AMERICA, ex Rel. RICHARD EICHENLAUB, Relator-Appellant,

v.

W. FRANK WATKINS, as District Director of Immigration and Naturalization, etc., Respondent-Appellee

Before Swan, Clark and Frank, Circuit Judges

Appeal from an order of the United States District Court for the Southern District of New York dismissing a writ of habeas corpus. Affirmed.

Harold K. McKee, for appellant.

John F. X. McGohey, United States Attorney for the Southern District of New York (John F. Ryan, of counsel) for appellee.

[fol. 21] Eichenlaub, the relator, entered the United States in 1930 and was naturalized in 1936. In 1941, he was convicted of the crime of having conspired to act as an agent for a foreign government without having registered. The indictment referred to 22 U. S. C. A. § 233. By the Act of March 28, 1940, § 233 had been amended so as to increase the penalty;[1] it now appears as 22 U. S. C. A. § 601. The Act of May 10, 1920,[2] provides in part: "* * * That aliens of the following classes, in addition to those for whose expulsion from the United States provision is made in the existing law, shall, upon the warrant of the Secretary of

[1] 54 Stat. 80.

[2] 41 Stat. 593, 594. Under the authority of 1940 Reorg. Plan No. V, 54 Stat. 1238, "Attorney General" is substituted for "Secretary of Labor." The Act is codified in 8 U. S. C. § 157; the words of the statute are, of course, controlling.

Labor, be taken into custody and deported in the manner provided in sections 19 and 20 of the Act of February 5, 1917, entitled 'An Act to regulate the immigration of aliens to, and the residence of aliens in, the United States,' if the Secretary of Labor, after hearing, finds that such aliens are undesirable residents of the United States, to wit: * * * (2) All aliens who since August 1, 1914, have been or may hereafter be convicted of any violation or conspiracy to violate any of the following Acts or parts of Acts, the judgment on such conviction having become final, namely: (a) An Act entitled 'An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes,' approved June 15, 1917, or the amendment thereof approved May 16, 1918; * * *" On January 25, 1944, in deporturalization proceedings in the district court for the Southern District of New York, a [fol. 22] decree was entered which cancelled relator's certificate of naturalization. Subsequently, administrative deportation proceedings were begun against him. He was arrested and given an administrative hearing. In those proceedings, a finding was made that he "is an undesirable resident of the United States." On October 9, 1945, a warrant of deportation was issued which stated in part the following: "Whereas, after due hearing * * * an order has been duly made that the alien Richard Eichenlaub * * * is subject to deportation under the following provisions of the laws of the United States, to wit: The Act approved May 10, 1920, in that he has been found to be a member of the undesirable classes of alien residents enumerated in said Act, to wit, an alien who since August 1, 1914 has been convicted of conspiracy (18 U. S. C. 88) to violate an Act entitled 'An Act to punish acts of interference with the foreign relations * * *" approved June 15, 1917 (22 U. S. C. 233)." Relator brought habeas corpus proceedings. From an order dismissing the writ he appeals.

FRANK, Circuit Judge:

Relator contends that 22 U. S. C. A. § 233 was repealed and that therefore he was not convicted of any crime enumerated in 8 U. S. C. A. § 157. We cannot agree; the

1940 Act did not repeal but merely increased the penalty prescribed in 22 U. S. C. A. § 233.[3] Nor do we agree with his contention that 8 U. S. C. A. § 157 does not include one who was a citizen when convicted but who is subsequently denaturalized. We think the decree of denaturalization [fol. 23] relates back, at least for this purpose. Cf. *Rosenberg* v. *United States*, 60 F. (2d) 475 (C. C. A. 3).

He also urges that the deportation warrant is defective, as not in accord with 8 U. S. C. A. § 157, since it states that he is "a member of the undesirable classes of alien residents enumerated in said Act" and does not state that he, as an individual, has been found to be an "undesirable resident." He cites *Mahler* v. *Eby*, 264 U. S. 32. But there the Court said (p. 43) that the defect in the warrants had not been met by other matter in the record. Here we have an explicit finding in the administrative proceedings that relator "is an undesirable resident." It would serve no useful purpose to remand to permit amendment of the warrant to conform to that finding.

Affirmed.

[3] If he means to contend that the indictment was insufficient, the contention is frivolous. As the court in the criminal suit had jurisdiction of both his person and the subject matter, he cannot, in a habeas corpus proceedings, attack the conviction.

[fol. 24] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 3rd day of May one thousand nine hundred and forty-eight.

Present: Hon. Thomas W. Swan, Hon. Charles E. Clark, Hon. Jerome N. Frank, Circuit Judges.

UNITED STATES ex Rel. RICHARD EICHENLAUB, Relator-Appellant,

v.

W. FRANK WATKINS, etc., Respondent-Appellee

Appeal from the District Court of the United States for the Southern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is affirmed.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Alexander M. Bell, Clerk.

[fol. 25] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. United States ex Rel. Richard Eichenlaub v. W. Frank Watkins. 254. Judgment. United States Circuit Court of Appeals, Second Circuit. Filed May 3, 1948. Alexander M. Bell, Clerk.

[fol. 26] UNITED STATES OF AMERICA,
Southern District of New York:

I, Alexander M. Bell, Clerk of the United States Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 25, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of United States of

America, ex Rel. Richard Eichenlaub, Relator-Appellant, against W. Frank Watkins, as District Director of Immigration and Naturalization of the United States for the District of New York, etc., Respondent-Appellee, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 1st day of September in the year of our Lord one thousand nine hundred and forty-eight, and of the Independence of the said United States the one hundred and seventy-third.

Alexander M. Bell, Clerk, by A. Daniel Fusaro, Deputy Clerk. (Seal.)

[fol. 27] [Stamp:] Office of the Clerk, Supreme Court, U. S., Jul. 30, 1948

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1948

No. —

UNITED STATES OF AMERICA, ex Rel. RICHARD EICHENLAUB, Petitioner,

vs.

W. FRANK WATKINS, as District Director of Immigration and Naturalization, etc.

ORDER

Upon consideration of the application of counsel for the petitioner,

It is ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including Sept. 3rd, 1948.

Fred M. Vinson, Chief Justice of the United States.

Dated this 30th day of July, 1948.

[fol. 25] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 27, 1949

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted. The order of November 15, 1948, denying certiorari is vacated. The case is assigned for argument immediately following Willumeit v. Watkins, No. 817, October Term, 1948.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.